

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BLAS G. VARELA,

Plaintiff,

vs.

No. CIV 10-0847 JB/WDS

MICHAEL J. ASTRUE,
Commissioner of Social Security
Administration,

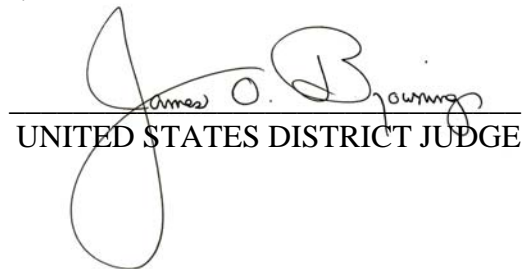
Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE’S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Magistrate Judge’s Proposed Findings and Recommended Disposition, filed March 22, 2012 (Doc. 21)(“PFRD”). The parties were notified that objections were due within fourteen days of service of the PFRD and that, if no objections were filed, no appellate review would be allowed. Fourteen days have now passed and, to date, no objections have been filed. The Court has carefully reviewed: (i) the Plaintiff’s Motion to Reverse and Remand for Reinstatement of Benefits, with Supporting Memorandum, filed January 19, 2011 (Doc. 14)(“Motion”); (ii) the Defendant’s Response to Plaintiff’s Motion to Reverse and Remand for Reinstatement of Benefits, filed March 24, 2011 (Doc. 17); and (iii) Plaintiff’s Reply to Defendant’s Response to Motion to Reverse and Remand for Reinstatement of Benefits, filed April 11, 2011 (Doc. 19). The Honorable W. Daniel Schneider, United States Magistrate Judge, found that the administrative law judge (“ALJ”) failed to address the proper balancing factors or to articulate what weight, if any, should be given to the opinion of Varela’s physician and that the ALJ incorrectly stated the burden of proof. See PFRD at 8,14. Judge Schneider also held that substantial evidence supports the ALJ’s findings of medical improvement, that substantial evidence supports

the ALJ's credibility determination, and that the ALJ adequately developed the record. See PFRD at 6-7, 12-13. The Court is in agreement with Judge Schneider's analysis in the PFRD. Given Judge Schneider's findings, however, the Court believes that it is more accurate to say that the Court will grant in part and deny in part the Motion. Accordingly, the Court will adopt in part the PFRD. The only portion that the Court will not adopt is the recommendation to grant the Motion, because the Court finds that it is more appropriate to grant in part and deny in part the Motion.

IT IS ORDERED that: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition, filed March 22, 2012 (Doc. 21), are adopted in part by the Court; (ii) the Plaintiff's Motion to Reverse and Remand for Reinstatement of Benefits, filed January 19, 2011 (Doc. 14), is granted in part and denied in part; and (iii) this matter is remanded to the Commissioner of Social Security for further proceedings consistent with the PFRD.



UNITED STATES DISTRICT JUDGE

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